

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAMUEL M. ROBERTS,

Plaintiff,

-vs-

**ANSWER TO
AMENDED COMPLAINT**

LOS ALAMOS NATIONAL SECURITY, LLC. ,
AWE, PLC, MASSACHUSETTS INSTITUTE
OF TECHNOLOGY,

Civil Case No.: 11-cv-6206(L)

Defendants.

Defendant, Los Alamos National Security, LLC (hereinafter "LANS"), by its attorneys,
Woods Oviatt Gilman LLP, for its answer to Plaintiff's complaint herein:

1. Admits the allegations in Paragraphs "2", "3", "4" "9" and "16", and so much of Paragraph "12" as alleges that Doctor Herrmann, Doctor Glebov and Doctor Kyrala were Principal Investigators on August 6, 2008.

2. Denies knowledge or information sufficient to form a belief as to the allegations in Paragraphs "1", "5", "6", "7", "8", "10", "15", "17", "18", "19", "20", "21", "22" and "24", and so much of Paragraph "12" as relates to Principal Investigators of experiments conducted within the Laboratory for Laser Energetics, other than Doctors Herrmann, Glebov and Kyrala.

3. Denies each and every other allegation not heretofore either specifically admitted or denied.

**AS AND FOR A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

4. That the cause of action set forth in Plaintiff's complaint is barred by the applicable Statute of Limitations.

**AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

5. That the injuries and damages alleged in Plaintiff's complaint were caused or contributed to, in whole or in part, by the assumption of risk by the Plaintiff or by the conduct of others over whom LANS exercised no control.

**AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

6. That whatever damages Plaintiff may have sustained at the time and place alleged in the complaint were caused, in whole or in part, or contributed to by the culpable conduct of the Plaintiff or the negligence of others over whom LANS exercised no control, without there being any negligence or fault or lack of care on the part of LANS.

**AS AND FOR A FOURTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

7. That, upon information and belief, the accident and the injuries complained of were caused or contributed to by Plaintiff's misuse of the equipment on which he was working and his failure to follow instructions and take the necessary precautions in connection with the work he was doing on the equipment in question.

**AS AND FOR A FIFTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

8. That Plaintiff's complaint fails to state a cause of action upon which relief may be granted.

**AS AND FOR A SIXTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

9. That, upon information and belief, any past or future costs, expenses or damages incurred, or which will be incurred, by the Plaintiff as alleged in the complaint, have been, or will be with reasonable certainty, replaced or indemnified, in whole or in part, from a collateral source, as that term is defined in Section 4545(c) of the New York Civil Practice Law and Rules.

10. That, by reason thereof, if any damages are recovered against LANS, the amount of any such damages must be diminished by the amount of the reimbursement or indemnification which Plaintiff has or shall receive from such collateral source.

**AS AND FOR A SEVENTH SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

11. That the complaint is barred, in whole or in part, or subject to reduction pursuant to the doctrines of superseding and/or intervening causes and/or negligence, insofar as the actions or negligence of other persons or entities proximately caused or contributed to the alleged incident and/or the alleged damages.

**AS AND FOR A CROSS-CLAIM, DEFENDANT,
LOS ALAMOS NATIONAL SECURITY, LLC,
ALLEGES:**

12. That to the extent that the injury and damages alleged in Plaintiff's amended complaint were caused by the Co-Defendants, AWE, PLC and Massachusetts Institute of Technology, Defendant, Los Alamos National Security, LLC, is not liable under the common law of the State of New York.

13. That if any judgment for damages, costs or any other recovery is rendered against Los Alamos National Security, LLC, then the Co-Defendants, AWE, PLC and Massachusetts

Institute of Technology are responsible, in whole or in part, and Defendant, Los Alamos National Security, LLC, is entitled to indemnity or contribution under the applicable statutes or common law from those Defendants for any such judgment.

WHEREFORE, Defendant, Los Alamos National Security, LLC, demands judgment as follows:

- a. Dismissing the Complaint of Plaintiff herein;
- b. Allocating the liability of the parties to this proceeding proportionate to the relative degree of culpability of Plaintiff, other contributing third-parties and LANS;
- c. Awarding LANS the costs and disbursements of this action;
- d. Awarding LANS attorney's fees; and
- e. Awarding such other and further relief as to the Court may seem just and proper.

DATED: July 28 2011
Rochester, New York

WOODS OVIATT GILMAN LLP

By: /s/: Beryl Nusbaum
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CERTIFICATE OF SERVICE

I, BERYL NUSBAUM, ESQ., attorney of record for Defendant, Los Alamos National Security, LLC, in the above-styled and referenced matter, do hereby certify that on July 29, 2011, I caused to be electronically filed the Answer of Defendant, Los Alamos National Security, LLC, using the CM/ECF system which served on and sent notification of such filing to the following:

Louis J. Micca, Esq.
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Pittsford, New York 14534
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THIS, the 29th day of July, 2011.

WOODS OVIATT GILMAN LLP

By: /s/: Beryl Nusbaum
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